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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WEI *et al.*

Appl. No. 08/874,460

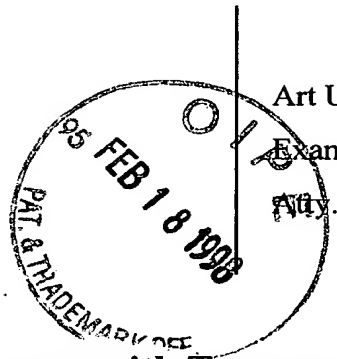
Filed: June 16, 1997

For: **Chemokine β-15**

Art Unit: 1812

Examiner: Draper, G.

Atty. Docket: 1488.0420001



Election and Response with Traverse Under 37 C.F.R. § 1.143

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated January 21, 1998, applicants provisionally elect, *with traverse*, Group I represented by claims 1-14 and 17 for further prosecution. Applicants reserve the right to file one or more divisional applications directed to the non-elected inventions should the restriction requirement be made final.

Remarks

Applicants respectfully traverse the restriction requirement as it applies to Groups I and II. It is the Examiner's position that nucleic acids and the encoded protein are patentably distinct molecules because "the product as claimed can be made by another and materially different process."

However, even where two patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of both groups would entail a "serious burden" (*see* MPEP § 803). In the present situation, the examiner has clearly failed to make such a showing. Indeed, no arguments have been made explaining why it would impose an undue burden to examine the polynucleotide and polypeptide claims together.